Supreme Court, U.S.
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No. 99-562

In The

Supreme Court of the United States

JOEL CUNIGAN, MARK WILES, ASST. CHIEF WAYNE GREEN, SAM MANLEY, JOHN TELEK, RICHMOND POLICE DEPARTMENT, THE CITY OF RICHMOND, KENTUCKY,

Petitioners,

v.

ALI SHAMAEIZADEH, M.D.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDING

The petition accurately lists the parties to the proceeding.

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STATEMENT OF THE CASE

This case derives from charges brought when Petitioners, members of the Richmond, Kentucky police, searched a rented basement apartment in the home where Respondent, Dr. Ali Shamaeizadeh, maintained his residence. During this search, police discovered growing marijuana in locked rooms in the basement apartment. Upon the discovery of marijuana, police brought state court proceedings against the various Defendants. These were subsequently dismissed and indictments were brought in the Federal Court against Respondent and the basement tenants.

In the District Court, suppression motions were filed by each Defendant based on various grounds particular to each. After a hearing, the Magistrate found, and the District Court confirmed, that evidence found in the residential portion of Dr. Shamaeizadeh's home, which was alleged to link him to the marijuana growing in the basement apartment of the house, would be suppressed due to the fact that when the police seized these items, they were outside the scope of the warrant that they had at the time they were taken. After having seized these items, the police got a second warrant in an unsuccessful attempt to legitimatize the taking of the items already seized.

The Magistrate also found that, as to the co-defendant renters, the marijuana found in their apartment was to be suppressed as to them only, because the police had no probable cause to search their home.

The United States appealed only the suppression of the marijuana but did not appeal the suppression of the

various documents and other items found in Dr. Shamaeizadeh's residence.

Dr. Shamaeizadeh appealed the ruling of the Magistrate as to his standing to seek the suppression of the marijuana, a point which the Magistrate had denied him. This appeal was dismissed by the Sixth Circuit by reported opinion. *U.S. v. Shamaeizadeh*, 41 F.3d 266 (6th Cir. 1994).

The co-defendants' appeal proceeded wherein the Sixth Circuit affirmed the ruling of the District Judge. Thus the marijuana was suppressed as to the co-defendants. *U.S. v. Shamaeizadeh*, 80 F.3d 1131 (6th Cir. 1996). The case was returned to the trial court where the prosecutor chose to move to dismiss the matter as to all defendants despite the fact that the growing marijuana was not suppressed as to Dr. Shamaeizadeh. The Sixth Circuit's mandate of the interlocutory appeal was final April 9, 1996. The Court dismissed the indictment May 8, 1996, as to all parties.

On April 8, 1997, Dr. Ali Shamaeizadeh brought a § 1983 action for violations of his civil rights and also brought pendant state matters. The remaining procedure is accurately stated in the Petitioners' brief.

REASONS FOR DENYING THE WRIT

I. There are no splits in the Circuits as to applying *Heck* to Federal defendants.

The Petitioners come before the Court asking that the Court grant certiorari to hold that *Heck v. Humphrey*, 512

U.S. 477 (1994) does not apply to exhonorated defendants of federal prosecutions. Petitioners ask this despite the fact that no Circuit Court has ruled that *Heck* does not apply in *Bivens* actions. Instead, eight circuits have found that it does. *Tavarez v. Reno*, 54 F.3d 109, 110 (2nd Cir. 1995); *Stephenson v. Reno*, 28 F.3d 26, 27 (5th Cir. 1994); *Robinson v. Jones*, 142 F.3d 905, 907 (6th Cir. 1998); *Leavell v. Keiffer*, Slip Op. 98-4089 (7th Cir. Aug. 19, 1999); *Martin v. Sias*, 88 F.3d 774, 775 (9th Cir. 1996); *Crow v. Penry*, 102 F.3d 1086, 1087 (10th Cir. 1996); *Abella v. Reno*, 63 F.3d 1063, 1065 (11th Cir. 1995); *Williams v. Hill*, 74 F.3d 1339, 1340 (D.C. Cir. 1996). To rule out *Heck* in federal cases would be to create chaos in the federal courts where order now reigns. In *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) this Court ruled § 1983 claims applied to federal actors and it is no stretch to apply *Heck* to the federal prosecution system. There is no conflict in the circuits and there is no need for this rule to be altered as the rules have been clearly and decisively applied concerning the application of *Heck v. Humphrey, id.* to exhonorated defendants in federal prosecutions.

II. Only the Seventh Circuit is Different

The Petitioners also come before this Court claiming that there is a vast split among the circuits concerning how to apply footnote 7 in *Heck*. In fact, presently, the only difference lies in the Seventh Circuit as compared to the rest of the circuits. The Eighth, Ninth and Eleventh have all come on board to apply *Heck* just as the Sixth and

the Second Circuits have done. All circuits save the Seventh now apply the same reasoning as applied in the opinion below. *White v. Gittens*, 121 F.3d 803, 807 (1st Cir. 1997); *Covington v. New York*, 171 F.3d 117 (2nd Cir. 1999), *petition for cert. filed*; *Smith v. Holtz*, 87 F.3d 108 (3rd Cir. 1996); *Brooks v. City of Winston-Salem, NC*, 85 F.3d 178 (4th Cir. 1996); *Mackey v. Dickson*, 47 F.3d 744 (5th Cir. 1995); *Shamaeizadeh v. Cunigan*, 182 F.3d 391 (6th Cir. 1999); *Wilson v. Lawrence County, Missouri*, Slip Op. No. 97-4142 (8th Cir. 1998); *Cabrera v. City of Huntington Park*, 159 F.3d 374 (9th Cir. 1998); *Beck v. City of Muskoga Police Dept.*, Slip Op. No. 98-7171 (10th Cir. 1998); *Uboh v. Reno*, Slip Op. No. 95-8557 (11th Cir. 1998).

Because Respondent was not a state-prosecuted individual but instead was indicted in federal court, his case is not appropriate to serve the purpose the Petitioners seek. To be proper precedent to either extend or limit *Heck*, a state prosecuted defendant suing under § 1983 is required. Otherwise, there would remain the question of whether this case, because of its facts, would apply to state cases. A pronouncement of same would not be resting on the law of the case but instead would be legislating issues which are not before the court. Thus to do what Petitioners seek would require judicial activism that has not been seen from this Court in may years.

The Seventh Circuit, which is admittedly different than the others, is applying its own rules to these cases. It has chosen to allow all Fourth Amendment lawsuits to be filed but then abstains from them under *Younger v. Harris*, 401 U.S. 37 (1971). *See Simpson v. Rowan*, 73 F.3d 134 (7th Cir. 1995). Therefore, the purposes of *Heck* are being applied in all circuits including the Seventh. Section 1983

cases are not being tried while criminal prosecutions are ongoing. There is no reason that Dr. Shamaeizadeh should have his claim derailed when his case is not on point, just to straighten out any problem this Court might have with the Seventh Circuit Court of Appeals.

To affirm all of the circuits to straighten out the Seventh Circuit would cause delay that would be an injustice to Dr. Shamaeizadeh. Further, the Seventh Circuit's ways cause no harm. The rules are now written. What does it matter that the Seventh Circuit differs from the others? Statutes of limitations differ as to all states, yet the court systems work. All that is required is that we know what the rules are. Petitioners have offered no compelling reason of national importance for the rules to be changed. Instead they ask the Court to change the rules and therefore require a whole new round of cases be decided to interpret these new rules. This serves no purpose. The system is now in place and the Court would serve everyone's interest by leaving it in place.

CONCLUSION

WHEREFORE, the Petitioners' request for a Writ of Certiorari should be denied.

Dated: October 28, 1999

Respectfully submitted,

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